

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RAYMOND TETRAULT, TIMOTHY)
MUELLER, RICHARD DOYLE AND)
DELBERT CLICK,)
Plaintiffs,) No. 4:11-cv-00695
vs.)
UNITED PARCEL SERVICE CO.,)
Defendant.)

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Defendant United Parcel Service, Inc., incorrectly named United Parcel Service Co. (“UPS”), and for its Answer and Affirmative Defenses submits the following:

1. UPS denies the allegations in Paragraph 1 of Plaintiffs’ Petition.
2. UPS denies that Plaintiffs were hired by United Parcel Service, Co. and submits further that Plaintiffs were hired by United Parcel Service, Inc. UPS admits the remaining allegations in paragraph 2 of Plaintiffs’ Petition.
3. UPS admits that Plaintiffs began their employment with United Parcel Service, Inc. prior to January 1, 2011 and that their work included driving various motor vehicles to deliver packages. UPS denies the remaining allegations in paragraph 3 of Plaintiffs’ Petition.
4. UPS denies the allegations in paragraph 4 of Plaintiffs’ Petition along with each subpart thereto.
5. UPS denies the allegations in paragraph 5 of Plaintiffs’ Petition.
6. UPS denies the allegations in paragraph 6 of Plaintiffs’ Petition.
7. UPS denies the allegations in paragraph 7 of Plaintiffs’ Petition.

8. UPS denies the allegations in paragraph 8 of Plaintiffs' Petition.
9. UPS denies the allegations in paragraph 9 of Plaintiffs' Petition along with each subpart thereto.
10. UPS denies the allegations in paragraph 10 of Plaintiffs' Petition.
11. UPS denies the allegations in paragraph 11 of Plaintiffs' Petition.
12. UPS denies the allegations in paragraph 12 of Plaintiffs' Petition.

WHEREFORE, having fully answered the allegations in Plaintiffs' Petition, Defendant United Parcel Service, Inc. incorrectly named United Parcel Service, Co. respectfully requests that this Court enter an Order dismissing this lawsuit with prejudice, granting Defendant its costs and fees incurred herein, and for such other and further relief as this Court deems just and proper.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. Plaintiffs' Petition fails to state a claim upon which relief can be granted.
2. Plaintiffs' Petition is barred by Plaintiffs' failure to exhaust their administrative remedies.
3. Plaintiffs' Petition is barred insofar as their lawsuit is broader than the allegations raised in a timely filed charge of discrimination.
4. Plaintiffs' Petition is barred in whole or in part because UPS' actions were justified by legitimate business reasons.
5. Plaintiffs' claims are state law claims for breach of a collective bargaining agreement and as such are preempted by § 301 of the Labor Management Relations Act. 29 U.S.C. § 185; *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962)(Section 301 preempts claims that allege violations of the collective bargaining agreement). Accordingly,

Plaintiffs' claims must be resolved through the grievance and arbitration procedures contained in the collective bargaining agreement or brought under § 301 of the LMRA.

6. Plaintiffs' claims are barred in whole or in part because of their own conduct.
7. Assuming *arguendo* that Plaintiffs sustained damages, which is denied, Plaintiffs' claims are barred due to their failure to mitigate their damages.
8. At all times relevant hereto, UPS exercised reasonable care to prevent discrimination and harassment and to promptly correct incidents of discrimination and harassment brought to their attention. Plaintiffs unreasonably failed to take advantage of or utilize their employer's policies and/or complaint procedures, and/or otherwise failed to avoid harm.

UPS reserves the right to amend this Answer to include additional defenses.

ARMSTRONG TEASDALE LLP

BY: /s/ Jovita M. Foster

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2011, the foregoing was filed via ECF and served via the Court's electronic notification system on the following:

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